

The Case

Of Mr. *Wyndham*, on his Appeal to the Right
Honorable the Lords Spiritual and Temporal
in this present Parliament Assembled, from a
Dismission and Decree made by the late Lord
Chancellor *Jefferys* in the Court of Chancery.

Edmund Wyndham, Esq; Pl.
Dame *Anne Wyndham*,
Widow, Def.

IN 1647. Sir *Edmund Wyndham* and Sir *Hugh Wyndham* both deceased, the Appellants Grandfather and Father mortgaged divers Lands to one *Edward Hyde*, Esq; in trust for Sir *Francis Wyndham*, Brother of Sir *Edmund*, under a Proviso that if Sir *Edmund*, or Sir *Hugh Wyndham*, or either of their Heirs, should within Ten Years after the Date of the Deed pay Sir *Francis Wyndham* 1800*l.* with Interest, and indemnify him and his Heirs for all Engagements he then stood Bound, or should become Bound for the said Sir *Edmund* and Sir *Hugh Wyndham*, the Deed was to be void.

That soon after the making of the Mortgage Sir *Edmund* went with his late Majesty King *Charles* the Second beyond Sea, and Sir *Hugh* was imprisoned for Loyalty, being obnoxious to the late Usurped Powers; and Sir *Francis Wyndham* was immediately impowered to sell any part of the Mortgaged Estate to discharge his Debt, and intrusted by Sir *Edmund* to receive the Rents and Profits of all other his Lands and Estate to hasten the Payment thereof: And Sir *Francis*, by such Sales and receipt of Profits, raised his whole Debt in a short Time after the Mortgage; and Sir *Edmund Wyndham* returned not into *England* till the Restauration of his late Majesty, and then Sir *Francis Wyndham* was a Member of Parliament and Privileged; but their were several References and Treaties between Sir *Edmund* and Sir *Francis*, in relation to the Mortgage, but no end was made before their Deaths; and Sir *Edmund* and Sir *Hugh Wyndham* being dead, the Appellant as their Heir claims the benefit of the Equity of Redemption; and the Defendant as Executrix of Sir *Francis Wyndham* claims what remains unfold of the Mortgaged Estate, and the Appellant's Suit in Chancery was to redeem the Estate, and have an account of the Monies raised towards the satisfaction thereof, and to avoid the same the Defendant pleaded the Statute of Limitation of Actions, and a pretended stated Account to be made up by and between Sir *Edmund* and Sir *Francis Wyndham*, and a Release of the Equity of Redemption; and though Sir *Hugh Wyndham* were then living, yet was made no party or any wise privy thereto, and by that pretended account there was due in 1664. or 1665. 2912*l.* 16*s.* and the Defendant brought her Bill against the Appellant, to redeem according to that Account, or be Foreclosed of the Equity of Redemption.

22 Nov. 3 Jac. 2. Both Causes were heard before the Lord Chancellor *Jefferys*, who dismissed the Appellants Bill with Costs; and upon the Defendants cross Bill decreed the Appellant to redeem the Mortgaged Premises upon the Foot of the pretended Account, by payment of 2912*l.* 16*s.* with Interest and Costs, or be Foreclosed of the Equity of Redemption; from which Dismission and Decree the Appellant appeals, as being both Unjust and Unreasonable.

First, For that the pretended stated Account was not ever fully Stated or Allowed, as such, either by the Appellants Grandfather or Father; but, on the contrary, was objected against as Erroneous, as appears by a Subscription thereto and Under-written, which the Defendant concealed, and did not set forth by her Plea or Answer in Chancery.

Secondly, There is omitted out of the Receipts of Sir *Francis Wyndham*, and in the Account, 952*l.* principle Money, and for which no Credit is given by the Account.

Thirdly, The Plaintiffs Grandfather is by the Account charged with an Estate of Sir *Francis Wyndham*, pretended to be sold by him to pay the Debt secured by the Mortgage 1245*l.* principle Money, which is fully proved to be sold but for 860*l.* and so is by the pretended Account overcharged with 340*l.* principle Money; and Interest upon Interest for the same, from 1655. to 1665.

Fourthly, The said Sir *Francis Wyndham* chargeth himself by the said Account but with 500*l.* received of one Mr. *Lacy* upon Sale of the Mortgaged Premises, whenas it is fully proved he received 570*l.* So that the 70*l.* and Interest thereof ever since 1649. is omitted out of the Account.

The whole Account throughout is made up and charged with Interest upon Interest, and for part of the purchase Money made by Sale of part of the Mortgaged Premises, and which were sold in 1649. the Mortgagors by the Account had no Credit or Allowance for the same till 1660, and yet in the mean time are charged with Interest upon Interest by the Account, in which there are many Omissions, Errors, and Over-charges, to the value of above 2000*l.* and the principle Debt mentioned in the Mortgage was but 1800*l.* and within Two Years after the Mortgage Sir *Francis Wyndham* made by Sales of the Mortgaged Estate above 2000*l.* besides the 952*l.* received by Profits, omitted to be charged in his Receipts; and he, and the Defendant, have besides kept near a 100*l.* per Annum of the mortgaged Estate ever since; and yet 'tis pretended there is still due near 3000*l.* on the Mortgage besides Interest, whenas on a just Account the Mortgage will appear over-paid: And on the whole Matter the Appellant humbly prays only to proceed to a Fair Account; and if any Thing shall appear thereon Due is ready to pay the same to the Defendant, upon reconveying of the Mortgaged Estate.

W. J. Williams

